

1 **TITLE III—INSURANCE**
2 **Subtitle A—State Regulation of**
3 **Insurance**

4 **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**
5 **ANCE.**

6 The Act entitled “An Act to express the intent of the
7 Congress with reference to the regulation of the business
8 of insurance” and approved March 9, 1945 (15 U.S.C.
9 1011 et seq.), commonly referred to as the “McCarran—
10 Ferguson Act”) remains the law of the United States.

11 **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**
12 **MENTS.**

13 No person or entity shall provide insurance in a State
14 as principal or agent unless such person or entity is li-
15 censed as required by the appropriate insurance regulator
16 of such State in accordance with the relevant State insur-
17 ance law, subject to section 104 of this Act.

18 **SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.**

19 The insurance sales activity of any person or entity
20 shall be functionally regulated by the States, subject to
21 section 104 of this Act.

22 **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL**
23 **BANKS.**

24 (a) IN GENERAL.—Except as provided in section 306,
25 a national bank and the subsidiaries of a national bank

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1 may not provide insurance in a State as principal except
2 that this prohibition shall not apply to authorized prod-
3 ucts.

4 (b) AUTHORIZED PRODUCTS.—For the purposes of
5 this section, a product is authorized if—

6 (1) as of January 1, 1997, the Comptroller of
7 the Currency had determined in writing that na-
8 tional banks may provide such product as principal,
9 or national banks were in fact lawfully providing
10 such product as principal;

11 (2) no court of relevant jurisdiction had, by
12 final judgment, overturned a determination of the
13 Comptroller of the Currency that national banks
14 may provide such product as principal; and

15 (3) the product is not title insurance, or an an-
16 nuity contract the income of which is subject to tax
17 treatment under section 72 of the Internal Revenue
18 Code of 1986.

19 (c) DEFINITION.—For purposes of this section, the
20 term “insurance” means—

21 (1) any product regulated as insurance as of
22 January 1, 1997, in accordance with the relevant
23 State insurance law, in the State in which the prod-
24 uct is provided;

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1 (2) any product first offered after January 1,
2 1997, which—

3 (A) a State insurance regulator determines
4 shall be regulated as insurance in the State in
5 which the product is provided because the prod-
6 uct insures, guarantees, or indemnifies against
7 liability, loss of life, loss of health, or loss
8 through damage to or destruction of property,
9 including, but not limited to, surety bonds, life
10 insurance, health insurance, title insurance, and
11 property and casualty insurance (such as pri-
12 vate passenger or commercial automobile,
13 homeowners, mortgage, commercial multiperil,
14 general liability, professional liability, workers'
15 compensation, fire and allied lines, farm owners
16 multiperil, aircraft, fidelity, surety, medical
17 malpractice, ocean marine, inland marine, and
18 boiler and machinery insurance); and

19 (B) is not a product or service of a bank
20 that is—

21 (i) a deposit product;

22 (ii) a loan, discount, letter of credit,
23 or other extension of credit;

24 (iii) a trust or other fiduciary service;

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1 (iv) a qualified financial contract (as
2 defined in or determined pursuant to sec-
3 tion 11(e)(8)(D)(i) of the Federal Deposit
4 Insurance Act); or

5 (v) a financial guaranty, except that
6 this subparagraph (B) shall not apply to a
7 product that includes an insurance compo-
8 nent such that if the product is offered or
9 proposed to be offered by the bank as prin-
10 cipal—

11 (I) it would be treated as a life
12 insurance contract under section 7702
13 of the Internal Revenue Code of 1986,
14 as amended; or

15 (II) in the event that the product
16 is not a letter of credit or other simi-
17 lar extension of credit, a qualified fi-
18 nancial contract, or a financial guar-
19 anty, it would qualify for treatment
20 for losses incurred with respect to
21 such product under section 832(b)(5)
22 of the Internal Revenue Code of 1986,
23 as amended, if the bank were subject
24 to tax as an insurance company under
25 section 831 of such Code; or

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1 (3) any annuity contract the income on which
2 is subject to tax treatment under section 72 of the
3 Internal Revenue Code of 1986, as amended.

4 **SEC. 305. NEW BANK AGENCY ACTIVITIES ONLY THROUGH**
5 **ACQUISITION OF EXISTING LICENSED**
6 **AGENTS.**

7 If a national bank or a subsidiary of a national bank
8 is not providing insurance as agent in a State as of the
9 date of the enactment of this Act, the national bank and
10 the subsidiary of the national bank may provide insurance
11 (which such bank or subsidiary is otherwise authorized to
12 provide) as agent in such State after such date only by
13 acquiring a company which has been licensed by the ap-
14 propriate State regulator to provide insurance as agent in
15 such State for not less than 2 years before such acquisi-
16 tion.

17 **SEC. 306. TITLE INSURANCE ACTIVITIES OF NATIONAL**
18 **BANKS AND THEIR AFFILIATES.**

19 (a) AUTHORITY.—

20 (1) IN GENERAL.—Notwithstanding any other
21 provision of this Act or any other law, no national
22 bank, and no subsidiary of a national bank, may en-
23 gage in any activity involving the underwriting or
24 sale of title insurance other than title insurance ac-
25 tivities in which such national bank or subsidiary

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1 was actively and lawfully engaged before the date of
2 the enactment of this Act.

3 (2) **INSURANCE AFFILIATE.**—In the case of a
4 national bank which has an affiliate which provides
5 insurance as principal and is not a subsidiary of the
6 bank, the national bank and any subsidiary of the
7 national bank may not engage in any activity involv-
8 ing the underwriting or sale of title insurance pursu-
9 ant to paragraph (1).

10 (3) **INSURANCE SUBSIDIARY.**—In the case of a
11 national bank which has a subsidiary which provides
12 insurance as principal and has no affiliate which
13 provides insurance as principal and is not a subsidi-
14 ary, the national bank may not engage in any activ-
15 ity involving the underwriting or sale of title insur-
16 ance pursuant to paragraph (1).

17 (4) **AFFILIATE AND SUBSIDIARY DEFINED.**—
18 For purposes of this section, the terms “affiliate”
19 and “subsidiary” have the meaning given such terms
20 in section 2 of the Bank Holding Company Act of
21 1956.

22 (b) **PARITY EXCEPTION.**—Notwithstanding sub-
23 section (a), in the case of any State in which banks orga-
24 nized under the laws of such State were authorized to sell
25 title insurance as agent as of January 1, 1997, a national

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1 bank and a subsidiary of a national bank may sell title
2 insurance as agent in such State in the same manner and
3 to the same extent such State banks are authorized to sell
4 title insurance as agent in such State.

5 **SEC. 307. EXPEDITED AND EQUALIZED DISPUTE RESOLU-**
6 **TION FOR FINANCIAL REGULATORS.**

7 (a) FILING IN COURT OF APPEAL.—In the case of
8 a regulatory conflict between a State insurance regulator
9 and a Federal regulator as to whether any product is or
10 is not insurance as defined in section 304(c) of this Act,
11 or whether a State statute, regulation, order, or interpre-
12 tation regarding any insurance sales or solicitation activity
13 is properly treated as preempted under Federal law, either
14 regulator may seek expedited judicial review of such deter-
15 mination by the United States Court of Appeals for the
16 circuit in which the State is located or in the United
17 States Court of Appeals for the District of Columbia Cir-
18 cuit by filing a petition for review in such court.

19 (b) EXPEDITED REVIEW.—The United States court
20 of appeals in which a petition for review is filed in accord-
21 ance with paragraph (1) shall complete all action on such
22 petition, including rendering a judgment, before the end
23 of the 60-day period beginning on the date such petition
24 is filed, unless all parties to such proceeding agree to any
25 extension of such period.

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1 (c) SUPREME COURT REVIEW.—Any request for
2 certiori to the Supreme Court of the United States of any
3 judgment of a United States court of appeals with respect
4 to a petition for review under this section shall be filed
5 with the United States Supreme Court as soon as prac-
6 ticable after such judgment is issued.

7 (d) STATUTE OF LIMITATION.—No action may be
8 filed under this section challenging an order, ruling, deter-
9 mination, or other action of a Federal financial regulator
10 or State insurance regulator after the later of—

11 (1) the end of the 12-month period beginning
12 on the date the first public notice is made of such
13 order, ruling, or determination in its final form; or

14 (2) the end of the 6-month period beginning on
15 the date such order, ruling, or determination takes
16 effect.

17 (e) STANDARD OF REVIEW.—The court shall decide
18 an action filed under this section based on its review on
19 the merits of all questions presented under State and Fed-
20 eral law, including the nature of the product or activity
21 and the history and purpose of its regulation under State
22 and Federal law, without unequal deference.

23 **SEC. 308. CONSUMER PROTECTION REGULATIONS.**

24 (a) REGULATIONS REQUIRED.—

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1 (1) IN GENERAL.—The Federal Deposit Insur-
2 ance Act (12 U.S.C. 1811 et seq.) is amended by
3 adding at the end the following new section:

4 **SEC. 45. CONSUMER PROTECTION REGULATIONS.**

5 “(a) REGULATIONS REQUIRED.—

6 “(1) IN GENERAL.—The Federal banking agen-
7 cies shall prescribe and publish in final form, before
8 the end of the 1-year period beginning on the date
9 of the enactment of this Act, consumer protection
10 regulations (which the agencies jointly determine to
11 be appropriate) that—

12 “(A) apply to retail sales, solicitations, ad-
13 vertising, or offers of any insurance product by
14 any insured depository institution or wholesale
15 financial institution or any person who is en-
16 gaged in such activities at an office of the insti-
17 tution or on behalf of the institution; and

18 “(B) are consistent with the requirements
19 of this Act and provide such additional protec-
20 tions for consumers to whom such sales, solici-
21 tations, advertising, or offers are directed as
22 the agency determines to be appropriate.

23 “(2) APPLICABILITY TO SUBSIDIARIES.—The
24 regulations prescribed pursuant to paragraph (1)
25 shall extend such protections to any subsidiaries of

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1 an insured depository institution, as deemed appro-
2 priate by the regulators referred to in paragraph (3),
3 where such extension is determined to be necessary
4 to ensure the consumer protections provided by this
5 section.

6 “(3) CONSULTATION AND JOINT REGULA-
7 TIONS.—The Federal banking agencies shall consult
8 with each other and prescribe joint regulations pur-
9 suant to paragraph (1), after consultation with the
10 State insurance regulators, as appropriate.

11 “(b) SALES PRACTICES.—The regulations prescribed
12 pursuant to subsection (a) shall include anticoercion rules
13 applicable to the sale of insurance products which prohibit
14 an insured depository institution from engaging in any
15 practice that would lead a consumer to believe an exten-
16 sion of credit, in violation of section 106(b) of the Bank
17 Holding Company Act Amendments of 1970, is condi-
18 tional upon—

19 “(1) the purchase of an insurance product from
20 the institution or any of its affiliates or subsidiaries;
21 or

22 “(2) an agreement by the consumer not to ob-
23 tain, or a prohibition on the consumer from obtain-
24 ing, an insurance product from an unaffiliated en-
25 tity.

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1 “(c) DISCLOSURES AND ADVERTISING.—The regula-
2 tions prescribed pursuant to subsection (a) shall include
3 the following provisions relating to disclosures and adver-
4 tising in connection with the initial purchase of an insur-
5 ance product:

6 “(1) DISCLOSURES.—

7 “(A) IN GENERAL.—Requirements that the
8 following disclosures be made orally and in writ-
9 ing before the completion of the initial sale and,
10 in the case of clause (iv), at the time of applica-
11 tion for an extension of credit:

12 “(i) UNINSURED STATUS.—As appro-
13 priate, the product is not insured by the
14 Federal Deposit Insurance Corporation,
15 the United States Government, or the in-
16 sured depository institution.

17 “(ii) INVESTMENT RISK.—In the case
18 of a variable annuity or other insurance
19 product which involves an investment risk,
20 that there is an investment risk associated
21 with the product, including possible loss of
22 value.

23 “(iv) COERCION.—The approval of an
24 extension of credit may not be conditioned
25 on—

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1 “(I) the purchase of an insurance
2 product from the institution in which
3 the application for credit is pending or
4 any of its affiliates or subsidiaries; or

5 “(II) an agreement by the
6 consumer not to obtain, or a prohibi-
7 tion on the consumer from obtaining,
8 an insurance product from an unaffili-
9 ated entity.

10 “(B) MAKING DISCLOSURE READILY UN-
11 DERSTANDABLE.—Regulations prescribed under
12 subparagraph (A) shall encourage the use of
13 disclosure that is conspicuous, simple, direct,
14 and readily understandable, such as the follow-
15 ing:

16 “(i) ‘NOT FDIC-INSURED’.

17 “(ii) ‘NOT GUARANTEED BY THE
18 BANK’.

19 “(iii) ‘MAY GO DOWN IN VALUE’.

20 “(C) ADJUSTMENTS FOR ALTERNATIVE
21 METHODS OF PURCHASE.—In prescribing the
22 requirements under subparagraphs (A) and
23 (D), necessary adjustments shall be made for
24 purchase in person, by telephone, or by elec-
25 tronic media to provide for the most appro-

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1 appropriate and complete form of disclosure and ac-
2 knowledge.

3 “(D) CONSUMER ACKNOWLEDGMENT.—A
4 requirement that an insured depository institu-
5 tion shall require any person selling an insur-
6 ance product at any office of, or on behalf of,
7 the institution to obtain, at the time a
8 consumer receives the disclosures required
9 under this paragraph or at the time of the ini-
10 tial purchase by the consumer of such product,
11 an acknowledgment by such consumer of the re-
12 ceipt of the disclosure required under this sub-
13 section with respect to such product.

14 “(2) PROHIBITION ON MISREPRESENTA-
15 TIONS.—A prohibition on any practice, or any adver-
16 tising, at any office of, or on behalf of, the insured
17 depository institution, or any subsidiary as appro-
18 priate, which could mislead any person or otherwise
19 cause a reasonable person to reach an erroneous be-
20 lief with respect to—

21 “(A) the uninsured nature of any insur-
22 ance product sold, or offered for sale, by the in-
23 stitution or any subsidiary of the institution; or

24 “(B) in the case of a variable annuity or
25 other insurance product that involves an invest-

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1 ment risk, the investment risk associated with
2 any such product.

3 “(d) SEPARATION OF BANKING AND NONBANKING
4 ACTIVITIES.—

5 “(1) REGULATIONS REQUIRED.—The regula-
6 tions prescribed pursuant to subsection (a) shall in-
7 clude such provisions as the Federal banking agen-
8 cies consider appropriate to ensure that the routine
9 acceptance of deposits and the making of loans is
10 kept, to the extent practicable, physically segregated
11 from insurance product activity.

12 “(2) REQUIREMENTS.—Regulations prescribed
13 pursuant to paragraph (1) shall include the follow-
14 ing requirements:

15 “(A) SEPARATE SETTING.—A clear delin-
16 eation of the setting in which, and the cir-
17 cumstances under which, transactions involving
18 insurance products should be conducted in a lo-
19 cation physically segregated from an area where
20 retail deposits are routinely accepted.

21 “(B) REFERRALS.—Standards which per-
22 mit any person accepting deposits from, or
23 making loans to, the public in an area where
24 such transactions are routinely conducted in an
25 insured depository institution to refer a cus-

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1 tomer who seeks to purchase any insurance
2 product to a qualified person who sells such
3 product, only if the person making the referral
4 receives no more than a one-time nominal fee of
5 a fixed dollar amount for each referral that
6 does not depend on whether the referral results
7 in a transaction.

8 “(C) QUALIFICATION AND LICENSING RE-
9 QUIREMENTS.—Standards prohibiting any in-
10 sured depository institution from permitting
11 any person to sell or offer for sale any insur-
12 ance product in any part of any office of the in-
13 stitution, or on behalf of the institution, unless
14 such person is appropriately qualified and li-
15 censed.

16 “(e) DOMESTIC VIOLENCE DISCRIMINATION PROHI-
17 BITION.—

18 “(1) IN GENERAL.—In the case of an applicant
19 for, or an insured under, any insurance product de-
20 scribed in paragraph (2), the status of the applicant
21 or insured as a victim of domestic violence, or as a
22 provider of services to victims of domestic violence,
23 shall not be considered as a criterion in any decision
24 with regard to insurance underwriting, pricing, re-
25 newal, or scope of coverage of insurance policies, or

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1 payment of insurance claims, except as required or
2 expressly permitted under State law.

3 “(2) SCOPE OF APPLICATION.—The prohibition
4 contained in paragraph (1) shall apply to any insur-
5 ance product which is sold or offered for sale, as
6 principal, agent, or broker, by any insured deposi-
7 tory institution or any person who is engaged in
8 such activities at an office of the institution or on
9 behalf of the institution.

10 “(3) SENSE OF THE CONGRESS.—It is the sense
11 of the Congress that, by the end of the 30-month pe-
12 riod beginning on the date of the enactment of this
13 Act, the States should enact prohibitions against dis-
14 crimination with respect to insurance products that
15 are at least as strict as the prohibitions contained in
16 paragraph (1).

17 “(4) DOMESTIC VIOLENCE DEFINED.—For pur-
18 poses of this subsection, the term ‘domestic violence’
19 means the occurrence of 1 or more of the following
20 acts by a current or former family member, house-
21 hold member, intimate partner, or caretaker:

22 “(A) Attempting to cause or causing or
23 threatening another person physical harm, se-
24 vere emotional distress, psychological trauma,
25 rape, or sexual assault.

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1 “(B) Engaging in a course of conduct or
2 repeatedly committing acts toward another per-
3 son, including following the person without
4 proper authority, under circumstances that
5 place the person in reasonable fear of bodily in-
6 jury or physical harm.

7 “(C) Subjecting another person to false
8 imprisonment.

9 “(D) Attempting to cause or cause damage
10 to property so as to intimidate or attempt to
11 control the behavior of another person.

12 “(f) CONSUMER GRIEVANCE PROCESS.—The Federal
13 banking agencies shall jointly establish a consumer com-
14 plaint mechanism, for receiving and expeditiously address-
15 ing consumer complaints alleging a violation of regulations
16 issued under the section, which shall—

17 “(1) establish a group within each regulatory
18 agency to receive such complaints;

19 “(2) develop procedures for investigating such
20 complaints;

21 “(3) develop procedures for informing consum-
22 ers of rights they may have in connection with such
23 complaints; and

24 “(4) develop procedures for addressing concerns
25 raised by such complaints, as appropriate, including

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1 procedures for the recovery of losses to the extent
2 appropriate.

3 “(g) EFFECT ON OTHER AUTHORITY.—

4 “(1) No provision of this section shall be con-
5 strued as granting, limiting, or otherwise affecting—

6 “(A) any authority of the Securities and
7 Exchange Commission, any self-regulatory or-
8 ganization, the Municipal Securities Rule-
9 making Board, or the Secretary of the Treasury
10 under any Federal securities law; or

11 “(B) any authority of any State insurance
12 commissioner or other State authority under
13 any State law.

14 “(2) Regulations prescribed by a Federal bank-
15 ing agency under this section shall not apply to re-
16 tail sales, solicitations, advertising, or offers of any
17 insurance product by any insured depository institu-
18 tion or wholesale financial institution or to any per-
19 son who is engaged in such activities at an office of
20 such institution or on behalf of the institution, in a
21 State where the State has in effect statutes, regula-
22 tions, orders, or interpretations, that are inconsis-
23 tent with or contrary to the regulations prescribed by
24 the Federal banking agencies.

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1 “(h) INSURANCE PRODUCT DEFINED.—For purposes
2 of this section, the term ‘insurance product’ includes an
3 annuity contract the income of which is subject to tax
4 treatment under section 72 of the Internal Revenue Code
5 of 1986.”.

6 **SEC. 309. CERTAIN STATE AFFILIATION LAWS PREEMPTED**
7 **FOR INSURANCE COMPANIES AND AFFILI-**
8 **ATES.**

9 No State may, by law, regulation, order, interpreta-
10 tion, or otherwise—

11 (1) prevent or restrict any insurer, or any affili-
12 ate of an insurer (whether such affiliate is organized
13 as a stock company, mutual holding company, or
14 otherwise), from becoming a financial holding com-
15 pany or acquiring control of an insured depository
16 institution;

17 (2) limit the amount of an insurer’s assets that
18 may be invested in the voting securities of an in-
19 sured depository institution (or any company which
20 controls such institution), except that the laws of an
21 insurer’s State of domicile may limit the amount of
22 such investment to an amount that is not less than
23 5 percent of the insurer’s admitted assets; or

24 (3) prevent, restrict, or have the authority to
25 review, approve, or disapprove a plan of reorganiza-

1 tion by which an insurer proposes to reorganize from
2 mutual form to become a stock insurer (whether as
3 a direct or indirect subsidiary of a mutual holding
4 company or otherwise) unless such State is the State
5 of domicile of the insurer.

6 **Subtitle B—Redomestication of**
7 **Mutual Insurers**

8 **SEC. 311. GENERAL APPLICATION.**

9 This subtitle shall only apply to a mutual insurance
10 company in a State which has not enacted a law which
11 expressly establishes reasonable terms and conditions for
12 a mutual insurance company domiciled in such State to
13 reorganize into a mutual holding company.

14 **SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.**

15 (a) REDOMESTICATION.—A mutual insurer organized
16 under the laws of any State may transfer its domicile to
17 a transferee domicile as a step in a reorganization in
18 which, pursuant to the laws of the transferee domicile and
19 consistent with the standards in subsection (f), the mutual
20 insurer becomes a stock insurer that is a direct or indirect
21 subsidiary of a mutual holding company.

22 (b) RESULTING DOMICILE.—Upon complying with
23 the applicable law of the transferee domicile governing
24 transfers of domicile and completion of a transfer pursu-
25 ant to this section, the mutual insurer shall cease to be

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1 a domestic insurer in the transferor domicile and, as a
2 continuation of its corporate existence, shall be a domestic
3 insurer of the transferee domicile.

4 (c) LICENSES PRESERVED.—The certificate of au-
5 thority, agents' appointments and licenses, rates, approv-
6 als and other items that a licensed State allows and that
7 are in existence immediately prior to the date that a re-
8 domesticating insurer transfers its domicile pursuant to
9 this subtitle shall continue in full force and effect upon
10 transfer, if the insurer remains duly qualified to transact
11 the business of insurance in such licensed State.

12 (d) EFFECTIVENESS OF OUTSTANDING POLICIES
13 AND CONTRACTS.—

14 (1) IN GENERAL.—All outstanding insurance
15 policies and annuities contracts of a redomesticating
16 insurer shall remain in full force and effect and need
17 not be endorsed as to the new domicile of the in-
18 surer, unless so ordered by the State insurance regu-
19 lator of a licensed State, and then only in the case
20 of outstanding policies and contracts whose owners
21 reside in such licensed State.

22 (2) FORMS.—

23 (A) Applicable State law may require a re-
24 domesticating insurer to file new policy forms
25 with the State insurance regulator of a licensed

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1 State on or before the effective date of the
2 transfer.

3 (B) Notwithstanding subparagraph (A), a
4 redomesticating insurer may use existing policy
5 forms with appropriate endorsements to reflect
6 the new domicile of the redomesticating insurer
7 until the new policy forms are approved for use
8 by the State insurance regulator of such li-
9 censed State.

10 (e) NOTICE.—A redomesticating insurer shall give
11 notice of the proposed transfer to the State insurance reg-
12 ulator of each licensed State and shall file promptly any
13 resulting amendments to corporate documents required to
14 be filed by a foreign licensed mutual insurer with the in-
15 surance regulator of each such licensed State.

16 (f) PROCEDURAL REQUIREMENTS.—No mutual in-
17 surer may redomesticate to another State and reorganize
18 into a mutual holding company pursuant to this section
19 unless the State insurance regulator of the transferee
20 domicile determines that the plan of reorganization of the
21 insurer includes the following requirements:

22 (1) APPROVAL BY BOARD OF DIRECTORS AND
23 POLICYHOLDERS.—The reorganization is approved
24 by at least a majority of the board of directors of
25 the mutual insurer and at least a majority of the

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1 policyholders who vote after notice, disclosure of the
2 reorganization and the effects of the transaction on
3 policyholder contractual rights, and reasonable op-
4 portunity to vote, in accordance with such notice,
5 disclosure, and voting procedures as are approved by
6 the State insurance regulator of the transferee domi-
7 cile.

8 (2) CONTINUED VOTING CONTROL BY POLICY-
9 HOLDERS; REVIEW OF PUBLIC STOCK OFFERING.—

10 After the consummation of a reorganization, the pol-
11 icyholders of the reorganized insurer shall have the
12 same voting rights with respect to the mutual hold-
13 ing company as they had before the reorganization
14 with respect to the mutual insurer. With respect to
15 an initial public offering of stock, the offering shall
16 be conducted in compliance with applicable securities
17 laws and in a manner approved by the State insur-
18 ance regulator of the transferee domicile.

19 (3) AWARD OF STOCK OR GRANT OF OPTIONS
20 TO OFFICERS AND DIRECTORS.—For a period of 6
21 months after completion of an initial public offering,
22 neither a stock holding company nor the converted
23 insurer shall award any stock options or stock
24 grants to persons who are elected officers or direc-
25 tors of the mutual holding company, the stock hold-

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1 ing company, or the converted insurer, except with
2 respect to any such awards or options to which a
3 person is entitled as a policyholder and as approved
4 by the State insurance regulator of the transferee
5 domicile.

6 (4) CONTRACTUAL RIGHTS.—Upon reorganiza-
7 tion into a mutual holding company, the contractual
8 rights of the policyholders are preserved.

9 (5) FAIR AND EQUITABLE TREATMENT OF POL-
10 ICYHOLDERS.—The reorganization is approved as
11 fair and equitable to the policyholders by the insur-
12 ance regulator of the transferee domicile.

13 **SEC. 313. EFFECT ON STATE LAWS RESTRICTING REDOMES-**
14 **TICATION.**

15 (a) IN GENERAL.—Unless otherwise permitted by
16 this subtitle, State laws of any transferor domicile that
17 conflict with the purposes and intent of this subtitle are
18 preempted, including but not limited to—

19 (1) any law that has the purpose or effect of
20 impeding the activities of, taking any action against,
21 or applying any provision of law or regulation to,
22 any insurer or an affiliate of such insurer because
23 that insurer or any affiliate plans to redomesticate,
24 or has redomesticated, pursuant to this subtitle;

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1 (2) any law that has the purpose or effect of
2 impeding the activities of, taking action against, or
3 applying any provision of law or regulation to, any
4 insured or any insurance licensee or other
5 intermediary because such person or entity has pro-
6 cured insurance from or placed insurance with any
7 insurer or affiliate of such insurer that plans to re-
8 domesticate, or has redomesticated, pursuant to this
9 subtitle, but only to the extent that such law would
10 treat such insured licensee or other intermediary dif-
11 ferently than if the person or entity procured insur-
12 ance from, or placed insurance with, an insured li-
13 censee or other intermediary which had not redomes-
14 ticated;

15 (3) any law that has the purpose or effect of
16 terminating, because of the redomestication of a mu-
17 tual insurer pursuant to this subtitle, any certificate
18 of authority, agent appointment or license, rate ap-
19 proval, or other approval, of any State insurance
20 regulator or other State authority in existence imme-
21 diately prior to the redomestication in any State
22 other than the transferee domicile.

23 (b) DIFFERENTIAL TREATMENT PROHIBITED.—No
24 State law, regulation, interpretation, or functional equiva-
25 lent thereof, of a State other than a transferee domicile

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1 may treat a redomesticating or redomesticated insurer or
2 any affiliate thereof any differently than an insurer oper-
3 ating in that State that is not a redomesticating or re-
4 domesticated insurer.

5 (c) LAWS PROHIBITING OPERATIONS.—If any li-
6 censed State fails to issue, delays the issuance of, or seeks
7 to revoke an original or renewal certificate of authority
8 of a redomesticated insurer immediately following re-
9 domestication, except on grounds and in a manner consist-
10 ent with its past practices regarding the issuance of cer-
11 tificates of authority to foreign insurers that are not re-
12 domesticating, then the redomesticating insurer shall be
13 exempt from any State law of the licensed State to the
14 extent that such State law or the operation of such State
15 law would make unlawful, or regulate, directly or indi-
16 rectly, the operation of the redomesticated insurer, except
17 that such licensed State may require the redomesticated
18 insurer to—

19 (1) comply with the unfair claim settlement
20 practices law of the licensed State;

21 (2) pay, on a nondiscriminatory basis, applica-
22 ble premium and other taxes which are levied on li-
23 censed insurers or policyholders under the laws of
24 the licensed State;

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1 (3) register with and designate the State insur-
2 ance regulator as its agent solely for the purpose of
3 receiving service of legal documents or process;

4 (4) submit to an examination by the State in-
5 surance regulator in any licensed state in which the
6 redomesticated insurer is doing business to deter-
7 mine the insurer's financial condition, if—

8 (A) the State insurance regulator of the
9 transferee domicile has not begun an examina-
10 tion of the redomesticated insurer and has not
11 scheduled such an examination to begin before
12 the end of the 1-year period beginning on the
13 date of the redomestication; and

14 (B) any such examination is coordinated to
15 avoid unjustified duplication and repetition;

16 (5) comply with a lawful order issued in—

17 (A) a delinquency proceeding commenced
18 by the State insurance regulator of any licensed
19 State if there has been a judicial finding of fi-
20 nancial impairment under paragraph (7); or

21 (B) a voluntary dissolution proceeding;

22 (6) comply with any State law regarding decep-
23 tive, false, or fraudulent acts or practices, except
24 that if the licensed State seeks an injunction regard-
25 ing the conduct described in this paragraph, such in-

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1 junction must be obtained from a court of competent
2 jurisdiction as provided in section 314(a);

3 (7) comply with an injunction issued by a court
4 of competent jurisdiction, upon a petition by the
5 State insurance regulator alleging that the redomes-
6 ticating insurer is in hazardous financial condition
7 or is financially impaired;

8 (8) participate in any insurance insolvency
9 guaranty association on the same basis as any other
10 insurer licensed in the licensed State; and

11 (9) require a person acting, or offering to act,
12 as an insurance licensee for a redomesticated insurer
13 in the licensed State to obtain a license from that
14 State, except that such State may not impose any
15 qualification or requirement that discriminates
16 against a nonresident insurance licensee.

17 **SEC. 314. OTHER PROVISIONS.**

18 (a) JUDICIAL REVIEW.—The appropriate United
19 States district court shall have exclusive jurisdiction over
20 litigation arising under this section involving any redomes-
21 ticating or redomesticated insurer.

22 (b) SEVERABILITY.—If any provision of this section,
23 or the application thereof to any person or circumstances,
24 is held invalid, the remainder of the section, and the appli-

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1 cation of such provision to other persons or circumstances,
2 shall not be affected thereby.

3 **SEC. 315. DEFINITIONS.**

4 For purposes of this subtitle, the following definitions
5 shall apply:

6 (1) COURT OF COMPETENT JURISDICTION.—

7 The term “court of competent jurisdiction” means a
8 court authorized pursuant to section 314(a) to adju-
9 dicate litigation arising under this subtitle.

10 (2) DOMICILE.—The term “domicile” means
11 the State in which an insurer is incorporated, char-
12 tered, or organized.

13 (3) INSURANCE LICENSEE.—The term “insur-
14 ance licensee” means any person holding a license
15 under State law to act as insurance agent, subagent,
16 broker, or consultant.

17 (4) INSTITUTION.—The term “institution”
18 means a corporation, joint stock company, limited li-
19 ability company, limited liability partnership, asso-
20 ciation, trust, partnership, or any similar entity.

21 (5) LICENSED STATE.—The term “licensed
22 State” means any State, the District of Columbia,
23 American Samoa, Guam, Puerto Rico, or the United
24 States Virgin Islands in which the redomesticating

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1 insurer has a certificate of authority in effect imme-
2 diately prior to the redomestication.

3 (6) MUTUAL INSURER.—The term “mutual in-
4 surer” means a mutual insurer organized under the
5 laws of any State.

6 (7) PERSON.—The term “person” means an in-
7 dividual, institution, government or governmental
8 agency, State or political subdivision of a State, pub-
9 lic corporation, board, association, estate, trustee, or
10 fiduciary, or other similar entity.

11 (8) POLICYHOLDER.—The term “policyholder”
12 means the owner of a policy issued by a mutual in-
13 surer, except that, with respect to voting rights, the
14 term means a member of a mutual insurer or mu-
15 tual holding company granted the right to vote, as
16 determined under applicable State law.

17 (9) REDOMESTICATED INSURER.—The term
18 “redomesticated insurer” means a mutual insurer
19 that has redomesticated pursuant to this subtitle.

20 (10) REDOMESTICATING INSURER.—The term
21 “redomesticating insurer” means a mutual insurer
22 that is redomesticating pursuant to this subtitle.

23 (11) REDOMESTICATION OR TRANSFER.—The
24 terms “redomestication” and “transfer” mean the

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1 transfer of the domicile of a mutual insurer from
2 one State to another State pursuant to this subtitle.

3 (12) STATE INSURANCE REGULATOR.—The
4 term “State insurance regulator” means the prin-
5 cipal insurance regulatory authority of a State, the
6 District of Columbia, American Samoa, Guam,
7 Puerto Rico, or the United States Virgin Islands.

8 (13) STATE LAW.—The term “State law”
9 means the statutes of any State, the District of Co-
10 lumbia, American Samoa, Guam, Puerto Rico, or the
11 United States Virgin Islands and any regulation,
12 order, or requirement prescribed pursuant to any
13 such statute.

14 (14) TRANSFEREE DOMICILE.—The term
15 “transferee domicile” means the State to which a
16 mutual insurer is redomesticating pursuant to this
17 subtitle.

18 (15) TRANSFEROR DOMICILE.—The term
19 “transferor domicile” means the State from which a
20 mutual insurer is redomesticating pursuant to this
21 subtitle.

22 **SEC. 316. EFFECTIVE DATE.**

23 This subtitle shall take effect on the date of enact-
24 ment of this Act.

1 **Subtitle C—National Association of**
2 **Registered Agents and Brokers**

3 **SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING**
4 **REFORMS.**

5 (a) IN GENERAL.—The provisions of this subtitle
6 shall take effect unless by the end of the 3-year period
7 beginning on the date of the enactment of this Act at least
8 a majority of the States—

9 (1) have enacted uniform laws and regulations
10 governing the licensure of individuals and entities
11 authorized to sell and solicit the purchase of insur-
12 ance within the State; or

13 (2) have enacted reciprocity laws and regula-
14 tions governing the licensure of nonresident individ-
15 uals and entities authorized to sell and solicit insur-
16 ance within those States.

17 (b) UNIFORMITY REQUIRED.—States shall be deemed
18 to have established the uniformity necessary to satisfy
19 subsection (a)(1) if the States—

20 (1) establish uniform criteria regarding the in-
21 tegrity, personal qualifications, education, training,
22 and experience of licensed insurance producers, in-
23 cluding the qualification and training of sales per-
24 sonnel in ascertaining the appropriateness of a par-
25 ticular insurance product for a prospective customer;

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1 (2) establish uniform continuing education re-
2 quirements for licensed insurance producers;

3 (3) establish uniform ethics course require-
4 ments for licensed insurance producers in conjunc-
5 tion with the continuing education requirements
6 under paragraph (2);

7 (4) establish uniform criteria to ensure that an
8 insurance product, including any annuity contract,
9 sold to a consumer is suitable and appropriate for
10 the consumer based on financial information dis-
11 closed by the consumer; and

12 (5) do not impose any requirement upon any in-
13 surance producer to be licensed or otherwise quali-
14 fied to do business as a nonresident that has the ef-
15 fect of limiting or conditioning that producer's ac-
16 tivities because of its residence or place of oper-
17 ations, except that counter-signature requirements
18 imposed on nonresident producers shall not be
19 deemed to have the effect of limiting or conditioning
20 a producer's activities because of its residence or
21 place of operations under this section.

22 (c) RECIPROCITY REQUIRED.—States shall be
23 deemed to have established the reciprocity required to sat-
24 isfy subsection (a)(2) if the following conditions are met:

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1 (1) ADMINISTRATIVE LICENSING PROCE-
2 DURES.—At least a majority of the States permit a
3 producer that has a resident license for selling or so-
4 liciting the purchase of insurance in its home State
5 to receive a license to sell or solicit the purchase of
6 insurance in such majority of States as a non-
7 resident to the same extent such producer is per-
8 mitted to sell or solicit the purchase of insurance in
9 its State, without satisfying any additional require-
10 ments other than submitting—

11 (A) a request for licensure;

12 (B) the application for licensure that the
13 producer submitted to its home State;

14 (C) proof that the producer is licensed and
15 in good standing in its home State; and

16 (D) the payment of any requisite fee to the
17 appropriate authority,

18 if the producer's home State also awards such li-
19 censes on such a reciprocal basis.

20 (2) CONTINUING EDUCATION REQUIRE-
21 MENTS.—A majority of the States accept an insur-
22 ance producer's satisfaction of its home State's con-
23 tinuing education requirements for licensed insur-
24 ance producers to satisfy the States' own continuing
25 education requirements if the producer's home State

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1 also recognizes the satisfaction of continuing edu-
2 cation requirements on such a reciprocal basis.

3 (3) NO LIMITING NONRESIDENT REQUIRE-
4 MENTS.—A majority of the States do not impose
5 any requirement upon any insurance producer to be
6 licensed or otherwise qualified to do business as a
7 nonresident that has the effect of limiting or condi-
8 tioning that producer's activities because of its resi-
9 dence or place of operations, except that
10 countersignature requirements imposed on non-
11 resident producers shall not be deemed to have the
12 effect of limiting or conditioning a producer's activi-
13 ties because of its residence or place of operations
14 under this section.

15 (4) RECIPROCAL RECIPROCITY.—Each of the
16 States that satisfies paragraphs (1), (2), and (3)
17 grants reciprocity to residents of all of the other
18 States that satisfy such paragraphs.

19 (d) DETERMINATION.—

20 (1) NAIC DETERMINATION.—At the end of the
21 3-year period beginning on the date of the enact-
22 ment of this Act, the National Association of Insur-
23 ance Commissioners shall determine, in consultation
24 with the insurance commissioners or chief insurance
25 regulatory officials of the States, whether the uni-

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1 formity or reciprocity required by subsections (b)
2 and (c) has been achieved.

3 (2) JUDICIAL REVIEW.—The appropriate Unit-
4 ed States district court shall have exclusive jurisdic-
5 tion over any challenge to the National Association
6 of Insurance Commissioners' determination under
7 this section and such court shall apply the standards
8 set forth in section 706 of title 5, United States
9 Code, when reviewing any such challenge.

10 (e) CONTINUED APPLICATION.—If, at any time, the
11 uniformity or reciprocity required by subsections (b) and
12 (c) no longer exists, the provisions of this subtitle shall
13 take effect within 2 years, unless the uniformity or reci-
14 procity required by those provisions is satisfied before the
15 expiration of that 2-year period.

16 (f) SAVINGS PROVISION.—No provision of this sec-
17 tion shall be construed as requiring that any law, regula-
18 tion, provision, or action of any State which purports to
19 regulate insurance producers, including any such law, reg-
20 ulation, provision, or action which purports to regulate un-
21 fair trade practices or establish consumer protections, in-
22 cluding countersignature laws, be altered or amended in
23 order to satisfy the uniformity or reciprocity required by
24 subsections (b) and (c), unless any such law, regulation,
25 provision, or action is inconsistent with a specific require-

1 ment of any such subsection and then only to the extent
2 of such inconsistency.

3 **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED**
4 **AGENTS AND BROKERS.**

5 (a) ESTABLISHMENT.—There is established the Na-
6 tional Association of Registered Agents and Brokers
7 (hereafter in this subtitle referred to as the “Association”)

8 (b) STATUS.—The Association shall—

9 (1) be a nonprofit corporation and be presumed
10 to have the status of an organization described in
11 section 501(c)(6) of the Internal Revenue Code of
12 1986 unless the Secretary of the Treasury deter-
13 mines that the Association does not meet the re-
14 quirements of such section;

15 (2) have succession until dissolved by an Act of
16 Congress;

17 (3) not be an agency or establishment of the
18 United States Government; and

19 (4) except as otherwise provided in this Act, be
20 subject to, and have all the powers conferred upon
21 a nonprofit corporation by the District of Columbia
22 Nonprofit Corporation Act (D.C. Code, sec. 29y-
23 1001 et seq.).

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1 **SEC. 323. PURPOSE.**

2 The purpose of the Association shall be to provide
3 a mechanism through which uniform licensing, appoint-
4 ment, continuing education, and other insurance producer
5 sales qualification requirements and conditions can be
6 adopted and applied on a multistate basis, while preserv-
7 ing the right of States to license, supervise, and discipline
8 insurance producers and to prescribe and enforce laws and
9 regulations with regard to insurance-related consumer
10 protection and unfair trade practices.

11 **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

12 The Association shall be subject to the supervision
13 and oversight of the National Association of Insurance
14 Commissioners (hereafter in this subtitle referred to as the
15 “NAIC”) and shall not be an agency or an instrumentality
16 of the United States Government.

17 **SEC. 325. MEMBERSHIP.**

18 (a) ELIGIBILITY.—

19 (1) IN GENERAL.—Any State-licensed insurance
20 producer shall be eligible to become a member in the
21 Association.

22 (2) INELIGIBILITY FOR SUSPENSION OR REV-
23 OCATION OF LICENSE.—Notwithstanding paragraph
24 (1), a State-licensed insurance producer shall not be
25 eligible to become a member if a State insurance
26 regulator has suspended or revoked such producer’s

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1 license in that State during the 3-year preceding the
2 date such producer applies for membership.

3 (3) RESUMPTION OF ELIGIBILITY.—Paragraph
4 (2) shall cease to apply to any insurance producer
5 if—

6 (A) the State insurance regulator renews
7 the license of such producer in the State in
8 which the license was suspended or revoked; or

9 (B) the suspension or revocation is subse-
10 quently overturned.

11 (b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-
12 TERIA.—The Association shall have the authority to estab-
13 lish membership criteria that—

14 (1) bear a reasonable relationship to the pur-
15 poses for which the Association was established; and

16 (2) do not unfairly limit the access of smaller
17 agencies to the Association membership.

18 (c) ESTABLISHMENT OF CLASSES AND CAT-
19 EGORIES.—

20 (1) CLASSES OF MEMBERSHIP.—The Associa-
21 tion may establish separate classes of membership,
22 with separate criteria, if the Association reasonably
23 determines that performance of different duties re-
24 quires different levels of education, training, or expe-
25 rience.

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1 (2) CATEGORIES.—The Association may estab-
2 lish separate categories of membership for individ-
3 uals and for other persons. The establishment of any
4 such categories of membership shall be based either
5 on the types of licensing categories that exist under
6 State laws or on the aggregate amount of business
7 handled by an insurance producer. No special cat-
8 egories of membership, and no distinct membership
9 criteria, shall be established for members which are
10 insured depository institutions or wholesale financial
11 institutions or for their employees, agents, or affili-
12 ates.

13 (d) MEMBERSHIP CRITERIA.—

14 (1) IN GENERAL.—The Association may estab-
15 lish criteria for membership which shall include
16 standards for integrity, personal qualifications, edu-
17 cation, training, and experience.

18 (2) MINIMUM STANDARD.—In establishing cri-
19 teria under paragraph (1), the Association shall con-
20 sider the highest levels of insurance producer quali-
21 fications established under the licensing laws of the
22 States.

23 (e) EFFECT OF MEMBERSHIP.—Membership in the
24 Association shall entitle the member to licensure in each
25 State for which the member pays the requisite fees, includ-

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1 ing licensing fees and, where applicable, bonding require-
2 ments, set by such State.

3 (f) ANNUAL RENEWAL.—Membership in the Associa-
4 tion shall be renewed on an annual basis.

5 (g) CONTINUING EDUCATION.—The Association shall
6 establish, as a condition of membership, continuing edu-
7 cation requirements which shall be comparable to or great-
8 er than the continuing education requirements under the
9 licensing laws of a majority of the States.

10 (h) SUSPENSION AND REVOCATION.—The Associa-
11 tion may—

12 (1) inspect and examine the records and offices
13 of the members of the Association to determine com-
14 pliance with the criteria for membership established
15 by the Association; and

16 (2) suspend or revoke the membership of an in-
17 surance producer if—

18 (A) the producer fails to meet the applica-
19 ble membership criteria of the Association; or

20 (B) the producer has been subject to dis-
21 ciplinary action pursuant to a final adjudicatory
22 proceeding under the jurisdiction of a State in-
23 surance regulator, and the Association con-
24 cludes that retention of membership in the As-
25 sociation would not be in the public interest.

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1 (i) OFFICE OF CONSUMER COMPLAINTS.—

2 (1) IN GENERAL.—The Association shall estab-
3 lish an office of consumer complaints that shall—

4 (A) receive and investigate complaints
5 from both consumers and State insurance regu-
6 lators related to members of the Association;
7 and

8 (B) recommend to the Association any dis-
9 ciplinary actions that the office considers appro-
10 priate, to the extent that any such rec-
11 ommendation is not inconsistent with State law.

12 (2) RECORDS AND REFERRALS.—The office of
13 consumer complaints of the Association shall—

14 (A) maintain records of all complaints re-
15 ceived in accordance with paragraph (1) and
16 make such records available to the NAIC and
17 to each State insurance regulator for the State
18 of residence of the consumer who filed the com-
19 plaint; and

20 (B) refer, when appropriate, any such com-
21 plaint to any appropriate State insurance regu-
22 lator.

23 (3) TELEPHONE AND OTHER ACCESS.—The of-
24 fice of consumer complaints shall maintain a toll-free
25 telephone number for the purpose of this subsection

1 and, as practicable, other alternative means of com-
2 munication with consumers, such as an Internet
3 home page.

4 **SEC. 326. BOARD OF DIRECTORS.**

5 (a) ESTABLISHMENT.—There is established the
6 board of directors of the Association (hereafter in this sub-
7 title referred to as the “Board”) for the purpose of govern-
8 ing and supervising the activities of the Association and
9 the members of the Association.

10 (b) POWERS.—The Board shall have such powers and
11 authority as may be specified in the bylaws of the Associa-
12 tion.

13 (c) COMPOSITION.—

14 (1) MEMBERS.—The Board shall be composed
15 of 7 members appointed by the NAIC.

16 (2) REQUIREMENT.—At least 4 of the members
17 of the Board shall have significant experience with
18 the regulation of commercial lines of insurance in at
19 least 1 of the 20 States in which the greatest total
20 dollar amount of commercial-lines insurance is
21 placed in the United States.

22 (3) INITIAL BOARD MEMBERSHIP.—

23 (A) IN GENERAL.—If, by the end of the 2-
24 year period beginning on the date of the enact-
25 ment of this Act, the NAIC has not appointed

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1 the initial 7 members of the Board of the Asso-
2 ciation, the initial Board shall consist of the 7
3 State insurance regulators of the 7 States with
4 the greatest total dollar amount of commercial-
5 lines insurance in place as of the end of such
6 period.

7 (B) ALTERNATE COMPOSITION.—If any of
8 the State insurance regulators described in sub-
9 paragraph (A) declines to serve on the Board,
10 the State insurance regulator with the next
11 greatest total dollar amount of commercial-lines
12 insurance in place, as determined by the NAIC
13 as of the end of such period, shall serve as a
14 member of the Board.

15 (C) INOPERABILITY.—If fewer than 7
16 State insurance regulators accept appointment
17 to the Board, the Association shall be estab-
18 lished without NAIC oversight pursuant to sec-
19 tion 332.

20 (d) TERMS.—The term of each director shall, after
21 the initial appointment of the members of the Board, be
22 for 3 years, with $\frac{1}{3}$ of the directors to be appointed each
23 year.

24 (e) BOARD VACANCIES.—A vacancy on the Board
25 shall be filled in the same manner as the original appoint-

1 ment of the initial Board for the remainder of the term
2 of the vacating member.

3 (f) MEETINGS.—The Board shall meet at the call of
4 the chairperson, or as otherwise provided by the bylaws
5 of the Association.

6 **SEC. 327. OFFICERS.**

7 (a) IN GENERAL.—

8 (1) POSITIONS.—The officers of the Association
9 shall consist of a chairperson and a vice chairperson
10 of the Board, a president, secretary, and treasurer
11 of the Association, and such other officers and as-
12 sistant officers as may be deemed necessary.

13 (2) MANNER OF SELECTION.—Each officer of
14 the Board and the Association shall be elected or ap-
15 pointed at such time and in such manner and for
16 such terms not exceeding 3 years as may be pre-
17 scribed in the bylaws of the Association.

18 (b) CRITERIA FOR CHAIRPERSON.— Only individuals
19 who are members of the National Association of Insurance
20 Commissioners shall be eligible to serve as the chairperson
21 of the board of directors.

22 **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

23 (a) ADOPTION AND AMENDMENT OF BYLAWS.—

24 (1) COPY REQUIRED TO BE FILED WITH THE
25 NAIC.—The board of directors of the Association

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1 shall file with the NAIC a copy of the proposed by-
2 laws or any proposed amendment to the bylaws, ac-
3 companied by a concise general statement of the
4 basis and purpose of such proposal.

5 (2) EFFECTIVE DATE.—Except as provided in
6 paragraph (3), any proposed bylaw or proposed
7 amendment shall take effect—

8 (A) 30 days after the date of the filing of
9 a copy with the NAIC;

10 (B) upon such later date as the Associa-
11 tion may designate; or

12 (C) such earlier date as the NAIC may de-
13 termine.

14 (3) DISAPPROVAL BY THE NAIC.—Notwith-
15 standing paragraph (2), a proposed bylaw or amend-
16 ment shall not take effect if, after public notice and
17 opportunity to participate in a public hearing—

18 (A) the NAIC disapproves such proposal as
19 being contrary to the public interest or contrary
20 to the purposes of this subtitle and provides no-
21 tice to the Association setting forth the reasons
22 for such disapproval; or

23 (B) the NAIC finds that such proposal in-
24 volves a matter of such significant public inter-
25 est that public comment should be obtained, in

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1 which case it may, after notifying the Associa-
2 tion in writing of such finding, require that the
3 procedures set forth in subsection (b) be fol-
4 lowed with respect to such proposal, in the
5 same manner as if such proposed bylaw change
6 were a proposed rule change within the mean-
7 ing of such paragraph.

8 (b) ADOPTION AND AMENDMENT OF RULES.—

9 (1) FILING PROPOSED REGULATIONS WITH THE
10 NAIC.—

11 (A) IN GENERAL.—The board of directors
12 of the Association shall file with the NAIC a
13 copy of any proposed rule or any proposed
14 amendment to a rule of the Association which
15 shall be accompanied by a concise general state-
16 ment of the basis and purpose of such proposal.

17 (B) OTHER RULES AND AMENDMENTS IN-
18 EFFECTIVE.—No proposed rule or amendment
19 shall take effect unless approved by the NAIC
20 or otherwise permitted in accordance with this
21 paragraph.

22 (2) INITIAL CONSIDERATION BY THE NAIC.—

23 Within 35 days after the date of publication of no-
24 tice of filing of a proposal, or before the end of such
25 longer period not to exceed 90 days as the NAIC

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1 may designate after such date if the NAIC finds
2 such longer period to be appropriate and sets forth
3 its reasons for so finding, or as to which the Asso-
4 ciation consents, the NAIC shall—

5 (A) by order approve such proposed rule or
6 amendment; or

7 (B) institute proceedings to determine
8 whether such proposed rule or amendment
9 should be modified or disapproved.

10 (3) NAIC PROCEEDINGS.—

11 (A) IN GENERAL.—Proceedings instituted
12 by the NAIC with respect to a proposed rule or
13 amendment pursuant to paragraph (2) shall—

14 (i) include notice of the grounds for
15 disapproval under consideration;

16 (ii) provide opportunity for hearing;
17 and

18 (iii) be concluded within 180 days
19 after the date of the Association's filing of
20 such proposed rule or amendment.

21 (B) DISPOSITION OF PROPOSAL.—At the
22 conclusion of any proceeding under subpara-
23 graph (A), the NAIC shall, by order, approve or
24 disapprove the proposed rule or amendment.

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1 (C) EXTENSION OF TIME FOR CONSIDER-
2 ATION.—The NAIC may extend the time for
3 concluding any proceeding under subparagraph
4 (A) for—

- 5 (i) not more than 60 days if the
6 NAIC finds good cause for such extension
7 and sets forth its reasons for so finding; or
8 (ii) for such longer period as to which
9 the Association consents.

10 (4) STANDARDS FOR REVIEW.—

11 (A) GROUNDS FOR APPROVAL.—The NAIC
12 shall approve a proposed rule or amendment if
13 the NAIC finds that the rule or amendment is
14 in the public interest and is consistent with the
15 purposes of this Act.

16 (B) APPROVAL BEFORE END OF NOTICE
17 PERIOD.—The NAIC shall not approve any pro-
18 posed rule before the end of the 30-day period
19 beginning on the date the Association files pro-
20 posed rules or amendments in accordance with
21 paragraph (1) unless the NAIC finds good
22 cause for so doing and sets forth the reasons
23 for so finding.

24 (5) ALTERNATE PROCEDURE.—

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1 (A) IN GENERAL.—Notwithstanding any
2 provision of this subsection other than subpara-
3 graph (B), a proposed rule or amendment relat-
4 ing to the administration or organization of the
5 Association may take effect—

6 (i) upon the date of filing with the
7 NAIC, if such proposed rule or amendment
8 is designated by the Association as relating
9 solely to matters which the NAIC, consist-
10 ent with the public interest and the pur-
11 poses of this subsection, determines by rule
12 do not require the procedures set forth in
13 this paragraph; or

14 (ii) upon such date as the NAIC shall
15 for good cause determine.

16 (B) ABROGATION BY THE NAIC.—

17 (i) IN GENERAL.—At any time within
18 60 days after the date of filing of any pro-
19 posed rule or amendment under subpara-
20 graph (A)(i) or (B)(ii), the NAIC may re-
21 peal such rule or amendment and require
22 that the rule or amendment be refiled and
23 reviewed in accordance with this para-
24 graph, if the NAIC finds that such action
25 is necessary or appropriate in the public

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1 interest, for the protection of insurance
2 producers or policyholders, or otherwise in
3 furtherance of the purposes of this subtitle.

4 (ii) EFFECT OF RECONSIDERATION BY
5 THE NAIC.—Any action of the NAIC pur-
6 suant to clause (i) shall—

7 (I) not affect the validity or force
8 of a rule change during the period
9 such rule or amendment was in effect;
10 and

11 (II) not be considered to be final
12 action.

13 (c) ACTION REQUIRED BY THE NAIC.—The NAIC
14 may, in accordance with such rules as the NAIC deter-
15 mines to be necessary or appropriate to the public interest
16 or to carry out the purposes of this subtitle, require the
17 Association to adopt, amend, or repeal any bylaw, rule or
18 amendment of the Association, whenever adopted.

19 (d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

20 (1) SPECIFICATION OF CHARGES.—In any pro-
21 ceeding to determine whether membership shall be
22 denied, suspended, revoked, and not renewed (here-
23 after in this section referred to as a “disciplinary ac-
24 tion”), the Association shall bring specific charges,
25 notify such member of such charges and give the

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1 member an opportunity to defend against the
2 charges, and keep a record.

3 (2) SUPPORTING STATEMENT.—A determina-
4 tion to take disciplinary action shall be supported by
5 a statement setting forth—

6 (A) any act or practice in which such
7 member has been found to have been engaged;

8 (B) the specific provision of this subtitle,
9 the rules or regulations under this subtitle, or
10 the rules of the Association which any such act
11 or practice is deemed to violate; and

12 (C) the sanction imposed and the reason
13 for such sanction.

14 (e) NAIC REVIEW OF DISCIPLINARY ACTION.—

15 (1) NOTICE TO THE NAIC.—If the Association
16 orders any disciplinary action, the Association shall
17 promptly notify the NAIC of such action.

18 (2) REVIEW BY THE NAIC.—Any disciplinary
19 action taken by the Association shall be subject to
20 review by the NAIC—

21 (A) on the NAIC's own motion; or

22 (B) upon application by any person ag-
23 grieved by such action if such application is
24 filed with the NAIC not more than 30 days
25 after the later of—

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- 1 (i) the date the notice was filed with
2 the NAIC pursuant to paragraph (1); or
3 (ii) the date the notice of the discipli-
4 nary action was received by such aggrieved
5 person.

6 (f) EFFECT OF REVIEW.—The filing of an applica-
7 tion to the NAIC for review of a disciplinary action, or
8 the institution of review by the NAIC on the NAIC's own
9 motion, shall not operate as a stay of disciplinary action
10 unless the NAIC otherwise orders.

11 (g) SCOPE OF REVIEW.—

12 (A) IN GENERAL.—In any proceeding to
13 review such action, after notice and the oppor-
14 tunity for hearing, the NAIC shall—

- 15 (i) determine whether the action
16 should be taken;
17 (ii) affirm, modify, or rescind the dis-
18 ciplinary sanction; or
19 (iii) remand to the Association for
20 further proceedings.

21 (B) DISMISSAL OF REVIEW.—The NAIC
22 may dismiss a proceeding to review disciplinary
23 action if the NAIC finds that—

- 24 (i) the specific grounds on which the
25 action is based exist in fact;

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- 1 (ii) the action is in accordance with
2 applicable rules and regulations; and
3 (iii) such rules and regulations are,
4 and were, applied in a manner consistent
5 with the purposes of this Act.

6 **SEC. 329. ASSESSMENTS.**

7 (a) INSURANCE PRODUCERS SUBJECT TO ASSESS-
8 MENT.—The Association may establish such application
9 and membership fees as the Association finds necessary
10 to cover the costs of its operations, including fees made
11 reimbursable to the NAIC under subsection (b), except
12 that, in setting such fees, the Association may not dis-
13 criminate against smaller insurance producers.

14 (b) NAIC ASSESSMENTS.—The NAIC may assess the
15 Association for any costs it incurs under this subtitle.

16 **SEC. 330. FUNCTIONS OF THE NAIC.**

17 (a) ADMINISTRATIVE PROCEDURE.—Determinations
18 of the NAIC, for purposes of making rules pursuant to
19 section 328, shall be made after appropriate notice and
20 opportunity for a hearing and for submission of views of
21 interested persons.

22 (b) EXAMINATIONS AND REPORTS.—

23 (1) The NAIC may make such examinations
24 and inspections of the Association and require the
25 Association to furnish it with such reports and

1 records or copies thereof as the NAIC may consider
2 necessary or appropriate in the public interest or to
3 effectuate the purposes of this subtitle.

4 (2) As soon as practicable after the close of
5 each fiscal year, the Association shall submit to the
6 NAIC a written report regarding the conduct of its
7 business, and the exercise of the other rights and
8 powers granted by this subtitle, during such fiscal
9 year. Such report shall include financial statements
10 setting forth the financial position of the Association
11 at the end of such fiscal year and the results of its
12 operations (including the source and application of
13 its funds) for such fiscal year. The NAIC shall
14 transmit such report to the President and the Con-
15 gress with such comment thereon as the NAIC de-
16 termines to be appropriate.

17 **SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIREC-**
18 **TORS, OFFICERS, AND EMPLOYEES OF THE**
19 **ASSOCIATION.**

20 (a) IN GENERAL.—The Association shall not be
21 deemed to be an insurer or insurance producer within the
22 meaning of any State law, rule, regulation, or order regu-
23 lating or taxing insurers, insurance producers, or other en-
24 titities engaged in the business of insurance, including pro-
25 visions imposing premium taxes, regulating insurer sol-

1 vency or financial condition, establishing guaranty funds
2 and levying assessments, or requiring claims settlement
3 practices.

4 (b) LIABILITY OF THE ASSOCIATION, ITS DIREC-
5 TORS, OFFICERS, AND EMPLOYEES.—Neither the Associa-
6 tion nor any of its directors, officers, or employees shall
7 have any liability to any person for any action taken or
8 omitted in good faith under or in connection with any mat-
9 ter subject to this subtitle.

10 **SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

11 (a) IN GENERAL.—The Association shall be estab-
12 lished without NAIC oversight and the provisions set forth
13 in section 324, subsections (a), (b), (c), and (e) of section
14 328, and sections 329(b) and 330 of this subtitle shall
15 cease to be effective if, at the end of the 2-year period
16 after the date on which the provisions of this subtitle take
17 effect pursuant to section 321—

18 (1) at least a majority of the States represent-
19 ing at least 50 percent of the total United States
20 commercial-lines insurance premiums have not satis-
21 fied the uniformity or reciprocity requirements of
22 subsections (a) and (b) of section 321; and

23 (2) the NAIC has not approved the Associa-
24 tion’s bylaws as required by section 328, the NAIC
25 is unable to operate or supervise the Association, or

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1 the Association is not conducting its activities as re-
2 quired under this Act.

3 (b) BOARD APPOINTMENTS.—If the repeals required
4 by subsection (a) are implemented—

5 (1) GENERAL APPOINTMENT POWER.—The
6 President, with the advice and consent of the United
7 States Senate, shall appoint the members of the As-
8 sociation’s Board established under section 326 from
9 lists of candidates recommended to the President by
10 the National Association of Insurance Commis-
11 sioners.

12 (2) PROCEDURES FOR OBTAINING NATIONAL
13 ASSOCIATION OF INSURANCE COMMISSIONERS AP-
14 POINTMENT RECOMMENDATIONS.—

15 (A) INITIAL DETERMINATION AND REC-
16 OMMENDATIONS.—After the date on which the
17 provisions of part a of this section take effect,
18 then the National Association of Insurance
19 Commissioners shall have 60 days to provide a
20 list of recommended candidates to the Presi-
21 dent. If the National Association of Insurance
22 Commissioners fails to provide a list by that
23 date, or if any list that is provided does not in-
24 clude at least 14 recommended candidates or
25 comply with the requirements of section 326(c),

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1 the President shall, with the advice and consent
2 of the United States Senate, make the requisite
3 appointments without considering the views of
4 the NAIC.

5 (B) SUBSEQUENT APPOINTMENTS.—After
6 the initial appointments, the National Associa-
7 tion of Insurance Commissioners shall provide a
8 list of at least 6 recommended candidates for
9 the Board to the President by January 15 of
10 each subsequent year. If the National Associa-
11 tion of Insurance Commissioners fails to pro-
12 vide a list by that date, or if any list that is
13 provided does not include at least 6 rec-
14 ommended candidates or comply with the re-
15 quirements of section 326(c), the President,
16 with the advice and consent of the Senate, shall
17 make the requisite appointments without con-
18 sidering the views of the NAIC.

19 (C) PRESIDENTIAL OVERSIGHT.—

20 (i) REMOVAL.—If the President deter-
21 mines that the Association is not acting in
22 the interests of the public, the President
23 may remove the entire existing Board for
24 the remainder of the term to which the
25 members of the Board were appointed and

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1 appoint, with the advice and consent of the
2 Senate, new members to fill the vacancies
3 on the Board for the remainder of such
4 terms.

5 (ii) SUSPENSION OF RULES OR AC-
6 TIONS.—The President, or a person des-
7 ignated by the President for such purpose,
8 may suspend the effectiveness of any rule,
9 or prohibit any action, of the Association
10 which the President or the designee deter-
11 mines is contrary to the public interest.

12 (d) ANNUAL REPORT.—As soon as practicable after
13 the close of each fiscal year, the Association shall submit
14 to the President and to Congress a written report relative
15 to the conduct of its business, and the exercise of the other
16 rights and powers granted by this subtitle, during such
17 fiscal year. Such report shall include financial statements
18 setting forth the financial position of the Association at
19 the end of such fiscal year and the results of its operations
20 (including the source and application of its funds) for such
21 fiscal year.

22 **SEC. 333. RELATIONSHIP TO STATE LAW.**

23 (a) PREEMPTION OF STATE LAWS.—State laws, reg-
24 ulations, provisions, or actions purporting to regulate in-

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1 insurance producers shall be preempted in the following in-
2 stances:

3 (1) No State shall impede the activities of, take
4 any action against, or apply any provision of law or
5 regulation to, any insurance producer because that
6 insurance producer or any affiliate plans to become,
7 has applied to become, or is a member of the Asso-
8 ciation.

9 (2) No State shall impose any requirement
10 upon a member of the Association that it pay dif-
11 ferent fees to be licensed or otherwise qualified to do
12 business in that State, including bonding require-
13 ments, based on its residency.

14 (3) No State shall impose any licensing, ap-
15 pointment, integrity, personal or corporate qualifica-
16 tions, education, training, experience, residency, or
17 continuing education requirement upon a member of
18 the Association that is different than the criteria for
19 membership in the Association or renewal of such
20 membership, except that counter-signature require-
21 ments imposed on nonresident producers shall not be
22 deemed to have the effect of limiting or conditioning
23 a producer's activities because of its residence or
24 place of operations under this section.

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1 (4) No State shall implement the procedures of
2 such State's system of licensing or renewing the li-
3 censes of insurance producers in a manner different
4 from the authority of the Association under section
5 325.

6 (b) SAVINGS PROVISION.—Except as provided in sub-
7 section (a), no provision of this section shall be construed
8 as altering or affecting the continuing effectiveness of any
9 law, regulation, provision, or action of any State which
10 purports to regulate insurance producers, including any
11 such law, regulation, provision, or action which purports
12 to regulate unfair trade practices or establish consumer
13 protections, including, but not limited to, countersignature
14 laws.

15 **SEC. 334. COORDINATION WITH OTHER REGULATORS.**

16 (a) COORDINATION WITH STATE INSURANCE REGU-
17 LATORS.—The Association shall have the authority to—

18 (1) issue uniform insurance producer applica-
19 tions and renewal applications that may be used to
20 apply for the issuance or removal of State licenses,
21 while preserving the ability of each State to impose
22 such conditions on the issuance or renewal of a li-
23 cense as are consistent with section 333;

24 (2) establish a central clearinghouse through
25 which members of the Association may apply for the

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1 issuance or renewal of licenses in multiple States;
2 and

3 (3) establish or utilize a national database for
4 the collection of regulatory information concerning
5 the activities of insurance producers.

6 (b) COORDINATION WITH THE NATIONAL ASSOCIA-
7 TION OF SECURITIES DEALERS.—The Association shall
8 coordinate with the National Association of Securities
9 Dealers in order to ease any administrative burdens that
10 fall on persons that are members of both associations, con-
11 sistent with the purposes of this subtitle and the Federal
12 securities laws.

13 **SEC. 335. JUDICIAL REVIEW.**

14 (a) JURISDICTION.—The appropriate United States
15 district court shall have exclusive jurisdiction over litiga-
16 tion involving the Association, including disputes between
17 the Association and its members that arise under this sub-
18 title. Suits brought in State court involving the Associa-
19 tion shall be deemed to have arisen under Federal law and
20 therefore be subject to jurisdiction in the appropriate
21 United States district court.

22 (b) EXHAUSTION OF REMEDIES.—An aggrieved per-
23 son must exhaust all available administrative remedies be-
24 fore the Association and the NAIC before it may seek judi-
25 cial review of an Association decision.

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1 (c) STANDARDS OF REVIEW.—The standards set
2 forth in section 553 of title 5, United States Code, shall
3 be applied whenever a rule or bylaw of the Association is
4 under judicial review, and the standards set forth in sec-
5 tion 554 of title 5, United States Code, shall be applied
6 whenever a disciplinary action of the Association is judi-
7 cially reviewed.

8 **SEC. 336. DEFINITIONS.**

9 For purposes of this subtitle, the following definitions
10 shall apply:

11 (1) INSURANCE.—The term “insurance” means
12 any product defined or regulated as insurance by the
13 appropriate State insurance regulatory authority.

14 (2) INSURANCE PRODUCER.—The term “insur-
15 ance producer” means any insurance agent or
16 broker, surplus lines broker, insurance consultant,
17 limited insurance representative, and any other per-
18 son that solicits, negotiates, effects, procures, deliv-
19 ers, renews, continues or binds policies of insurance
20 or offers advice, counsel, opinions or services related
21 to insurance.

22 (3) STATE LAW.—The term “State law” in-
23 cludes all laws, decisions, rules, regulations, or other
24 State action having the effect of law, of any State.
25 A law of the United States applicable only to the

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1 District of Columbia shall be treated as a State law
2 rather than a law of the United States.

3 (4) STATE.—The term “State” includes any
4 State, the District of Columbia, American Samoa,
5 Guam, Puerto Rico, and the United States Virgin
6 Islands.

7 (5) HOME STATE.—The term “home State”
8 means the State in which the insurance producer
9 maintains its principal place of residence and is li-
10 censed to act as an insurance producer.